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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Tariff Filing Requirements For )  
Nondominant Common Carriers )

CC Docket No. 93-36

REPLY COMMENTS OF BELL ATLANTIC<sup>1</sup>

MFS continues to bombard the Commission with irrelevant claims and misleading information to support its plaintive cries for protection from the alleged "monopoly" power of local exchange carriers ("LECs").<sup>2</sup>

Here, MFS argues that "the LECs merit vigilant regulation because of their insusceptibility to market pressures."<sup>3</sup> To support this claim, MFS cites a statement in a consultant's report that LECs "dominate more than 99% of the market for local services."<sup>4</sup> That figure, however, refers to the LECs' share of the local exchange market, not to the interstate access markets at issue in this proceeding.

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company and New Jersey Bell Telephone Company.

<sup>2</sup> MFS Communications Company, Inc. ["MFS"] Comments on Notice of Proposed Rulemaking.

<sup>3</sup> *Id.* at 5 (emphasis in the original).

<sup>4</sup> *Id.* at 6, citing Connecticut Research, 1992 Alternate Local Exchange Market Study, at 26 ("Connecticut Research").

The authors of the very study on which MFS relies, however, candidly admit that the 99% figure is "not a very meaningful comparison."<sup>5</sup> As a result, it would be arbitrary and irrational for the Commission to base its decision here on that figure. In fact, the Connecticut Research study acknowledges that "the only meaningful way to measure relative market share is to define a geometrical location .... say, a city ... and a service and count the number of circuits, by type, that each competitor has in operation."<sup>6</sup> This approach makes sense because the relevant market here is interstate access services in major markets. This, after all, is the target market of MFS and other competitive access providers ("CAPs").

Using an appropriate market definition, Connecticut Research concludes that the CAPs' share of DS-1 special access traffic in Manhattan and Chicago was about 30% in 1992<sup>7</sup> -- figures that belie MFS's claim that the LECs are immune from market pressures. More recent surveys show that the CAPs have also garnered shares of 25% or more of the end user DS-1 traffic in the major Bell Atlantic markets of Washington, Philadelphia, Pittsburgh and Baltimore.<sup>8</sup>

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<sup>5</sup> Connecticut Research at 36.

<sup>6</sup> *Id.* at 37.

<sup>7</sup> *Id.*

<sup>8</sup> *Quality Strategies - Bell Atlantic 1992 With Competitive Bid*

The significant inroads that CAPs have already made in major markets, and the prospects of shares of 40% or more of targeted markets<sup>9</sup> cry out for a market approach to streamlined tariffing, as Bell Atlantic proposed, rather than a dominant/non-dominant carrier approach.<sup>10</sup> Under Bell Atlantic's proposal, if a market is competitive, all carriers in that market are subject to the same, streamlined, tariffing requirements.

The Commission already has in place a raft of controls, including its cost allocation rules, Part 32 accounting rules, and the ARMIS system, supplemented by audits and the complaint process, to prevent cross-subsidies. These controls allow the Commission to base the degree of tariff regulation on the competitiveness of a particular market, without concern that cross-subsidization will occur.

If a market is competitive, there is less need for regulatory scrutiny. For the public to benefit from marketplace competition, however, all participants must compete under the same rules. Even MFS supports giving pricing flexibility in effectively competitive markets. In its comments filed April 2, 1993 in Phase II of the Commission's switched collocation proceeding, CC Docket No. 91-141, MFS admitted that "as telecommunications markets become effectively competitive, relaxation of some of the regulatory constraints on dominant carrier pricing is

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<sup>9</sup> Connecticut Research at 38.

<sup>10</sup> Comments of Bell Atlantic at 2-7.

often appropriate."<sup>11</sup> As the access market share figures quoted above demonstrate, even under MFS's standard, the time to remove asymmetrical pricing constraints has arrived.

The Commission, however, may not eliminate the filing of specific tariff rates for interstate services consistent with the Communications Act ("Act"). Two parties cite *Associated Gas Distributors v. F.E.R.C.*, 824 F.2d 981 (D.C. Cir. 1987) to support their claim that the Commission has the power to permit tariffs showing maximum rates or a range of rates.<sup>12</sup> As described below, however, the statute at issue in that case differs dramatically from the Act, and, therefore, cannot serve as a valid precedent here.

Section 203(a) of the Act, which mandates the filing of tariff schedules "showing all charges,"<sup>13</sup> has no parallel provision in the statutes regulating natural gas. Instead, the Federal Energy Regulatory Commission is specifically instructed under the Natural Gas Policy Act to set or approve *maximum or ceiling* wellhead prices,<sup>14</sup> and *maximum* rates for intrastate pipelines.<sup>15</sup> The statute requires that interstate gas transport

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<sup>11</sup> Comments of MFS Communications Company at 23.

<sup>12</sup> Comments of the Competitive Telecommunications Association at 10, Comments of the Cellular Telecommunications Industry Association at 4.

<sup>13</sup> 47 U.S.C. § 203(a).

<sup>14</sup> 15 U.S.C. §§ 3311 *et seq.*

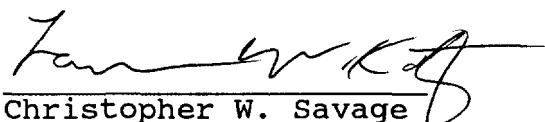
<sup>15</sup> 15 U.S.C. §§ 3371(a)(2)(B) and (b)(2).

rates must be just and reasonable, but there is no provision that is comparable to Section 203 of the Act that requires the filing of tariffs or of specific rates.<sup>16</sup>

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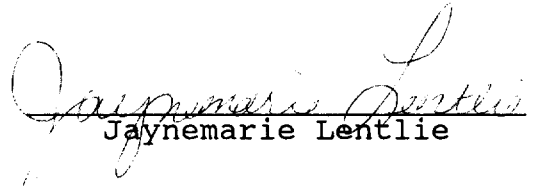
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<sup>16</sup> 15 U.S.C. § 3371(a)(1)(B).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of Bell Atlantic" was served this 19th day of April, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.

  
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